

PATENT EXAMINATION REPORT  
[Prüfungsbescheid]

Dr. Langen

UNITED STATES PATENT AND TRADEMARK OFFICE  
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Munich; January 8, 2009

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File Number:

Applicant/Holder: VA, Inc.

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February 4, 2009

Deadline:

Preliminary deadline:

Examination request, payment day on April 8, 2005

Petition of \_\_\_\_\_ submitted on \_\_\_\_\_

The examination of the patent application mentioned above has led to the following result.

A time period of

6 months

has been granted for a response. The time period begins on the day which follows the day of delivery of the notice.

For documents which are perhaps appended to the statement (for example, description, description parts, patent claims, drawings), two copies on special sheets are required. The statement itself is needed only in one copy.

If the description, the patent claims, or the drawings are changed in the course of the proceedings, then, if the changes were not proposed by the German Patent and Trademark Office, the applicant has to indicate, in detail, the place where the invention features described in the new documents are disclosed in the original documents.

The following citations are mentioned for the first time in this notice. (In their numeration, this is also valid for the further proceedings):

#### Instructions for the possibility of the registered utility model division

The applicant of a patent application submitted for effect for the Federal Republic of Germany can submit a registered utility model application which concerns the same subject, and at the same time, Claim the application of the earlier patent application. This division (Section 5, Registered Utility Model Law) is possible until the expiration of 2 months after the end of the month in which the patent application is settled by a legally valid rejection, voluntary withdrawal, or hypothetical withdrawal, opposition proceedings have been concluded, or—in the case of the granting of the patent—the period for complaints against the decision has elapsed to no avail. Detailed information regarding the

requirements of a registered utility model application, including the division, can be found in the Instruction Leaflet for Registered Utility Model Applicants (G 6181), which can be obtained free of charge from the Patent and Trademark Office and Patent Information Centers.

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January 8, 2009

(1) "As if lubricated: Alone or as an additive: PE-UHMW improves the properties of materials"  
in: CHEMIE TECHNIK, Vol. 30, 10/2001, pages 38 and 39.

(2) US 3 967 293 A

(3) US 3 664 251 A, already mentioned by the applicant

(4) US 3 595 553 A, already mentioned by the applicant

(5) DE 695 17 658 T2

(6) DE 694 08 355 T2

1. Asserted Claim 1, submitted on January 28, 2005, contains unclear formulations, which are not suitable for the creation of rights beyond a doubt.

Thus, it is unclear in asserted Claim 1 whether the features indicated purely optionally only" ... as, for example, of a camera shutter or the like..." are necessary for the technical teaching or not—see Schulte, Patent Law, 8th Edition, Section 34, Marginal Number 135.

In addition, the indefinite indication "or the like," is also unclear, because this refers, in only an indiscriminate manner, to equivalents which are not mentioned and therefore, it remains open as to what devices should actually be considered equivalent to a camera shutter—see Schulte, Patent Law, 8th Edition, Section 34, Marginal Number 172, Footnote 157.

In this connection, the formulation "of a body of low mass" is also indefinite, since it is not clear what masses are to be regarded as "low"—see Schulte, Patent Law, 8th Edition, Section 34, Marginal Number 142.

Furthermore, as a result of the missing measurement unit in the indication "... with a molecular weight of 3-6 million...", it is unclear what physical variable this really is, wherein, in particular, the absolute or relative molecular mass or the molar mass indicated in grams per mol can be considered. Thus, it is also unclear what types of polyethylene should be designated by this mass indication in feature c) of the asserted Claim 1. Asserted Claim 1 can therefore not be granted, since it is not clearly indicated what should be placed under protection as patentable.

2. For the creation of a clear Claim 1, in asserted Claim 1:

- the unclear formulation "... of a body of low mass, such as of a camera shutter or the like ..." would have to be replaced by the clear designation "...of a camera shutter ...";

- the designation "polyethylene with a molecular weight of 3-6 million" would have to be replaced by the technically normal indication "polyethylene with ultrahigh molecular weight," disclosed in the original description on pages 4 and 9, which obviously represents the German language definition of the common material designations PE-UHMW or UHMWPE—see also the pertinent indications in Publication (1), in particular in the last column on page 39.

3. With regard to a Claim 1, clarified in accordance with Point 2 of this Notice, we will express our opinion in the following manner:

From Publication (2), see, in particular, the Abstract and Figures 1-4, with text, a dampening system for stopping the movement of a body of low mass, formed as a camera shutter, is already known, which has the following features:

- a) a driving beam, which is supported in such a way that it oscillates on a curved path ("... levers 18 and 20, which are pivoted on floating pivots ... and carrying the respective beams 26 and 27 ...").

b) a barrier ("detents 40 and 41"), whose ends, lying opposite one another, are arranged in such a manner that they stop the oscillating movement of the driving beam on each end of the curved path; and

c) shaped buffers 58 on each of the ends of the barrier, lying opposite one another, wherein the buffers are made of a compressible, elastic material, such as polyurethane ("... outer portions 56 and 57 are covered with a compressible, resilient material such as polyurethane...").

Corresponding dampening systems are, moreover, also known already from Publications (3) and (4). The subject of a Claim 1, clarified as described above, thus differs from the state of the art, known from Publications (2)-(4), in that

- the buffers are composed of polyethylene with an ultrahigh molecular weight; and
- a dampening element made of polyurethane is provided on the driving beam; it can engage with each of the shaped buffers.

It is true that the use of polyurethane as a dampening material is basically known from Publications (2)-(4). Furthermore, the specialist is familiar, for example, from Publication (1), with the excellent material properties, especially the sliding capacity and the abrasion resistance, of polyethylene with an ultrahigh molecular weight (PE-UHMW). However, the replacement of the buffers known from Publications (2)-(4) with buffers made of PE-UHMW, and additionally, the provision of the driving beam with dampeners made of polyurethane, for engagement, are not obvious from the state of the art known from Publications (2)-(4).

A Claim 1, clarified in accordance with Point 2 of this Notice, would therefore also be, in all likelihood, grantable, with respect to the cited state of the art.

4. The coordinated, asserted Claim 12 contains the same unclear formulations as the asserted Claim 1 and is therefore not grantable, for the same reason as the asserted Claim 1. Moreover, the asserted

Claim 12 contains the unclear, indefinite indications "essentially punctiform" and "circa 58"—see Schulte, Patent Law, 8th Edition, Section 34, Marginal Number 142, and the unclear formulation "each dampener consists...according to ASTM D 2240, of a hardness according to Shore A ...," wherein it remains open, in particular, whether the ASTM indication refers to the dampener or the hardness. Apart from this, the use of ASTM data in the patent Claim is of no help in the precise definition of the subject of the application either, since ASTM standards can be subject to changes.

For the clarification, in the asserted Claim 12,

- the unclear formulations mentioned above would be replaced by the simpler, clear formulation "...each dampener is made of a polyethylene with a good dampening behavior and a hardness according to Shore A of 58...";

- the indefinite indication " ... essentially ..." would be deleted; and moreover,

- the clarifications mentioned under Point 2 of this Notices would be analogously undertaken.

The correspondingly clarified Claim 12 would, in all likelihood, likewise be grantable as a coordinated Claim with regard to the cited state of the art.

5. The coordinated, cited Claim 23 contains, with "...with a molecular weight of 3-6 million...", the same unclear formulation as the asserted Claim 1 and is already nongrantable for this reason.

Moreover, Claim 23, which is not limited to camera shutters and apertures, generally concerns a dampening system for stopping the movement of a body, as is already obvious by the state of the art. Thus, the designations "dampeners" and "buffers" comprise bumpers also, as they are known, for example, from motor vehicle technology—see Publication (5), in particular, Claims 1-9, in which the use of polyethylene and polyurethane as a dampening material is also disclosed. As a result, its excellent material properties and universal applicability, mentioned above and described in Publication (1), the



specialist will, in the area of material technology, take into consideration, as polyethylene, in particular, modern PE-UHMW materials also. Two colliding motor vehicles with the bumpers known from Publication (5) would accordingly also form a dampening system already, in the sense of a clarified Claim 23. The subject of a Claim 23, clarified in a manner analogous to Claim 1, is therefore produced already by a close look at Publications (1) and (5).

6. The coordinated, asserted Claims 15, 16, 21, and 31 contain no data which take into account the special composition of the dampeners and buffers made of polyurethane and PE-UHMW, which represents an essential feature of the asserted Claims 1, 12, and 23. Thus, it is not possible to see which uniform inventive idea, in the sense of Section 34 (5), Patent Law, should be implemented with the devices according to Claims 1, 12, and 23, on the one hand, and the devices according to Claims 15, 16, 21, and 31, on the other hand.

The application under consideration, therefore, lacks the uniformity required for the granting of the patent. In a further pursuit of the application on the basis of independent Claims 1 and 12, which are grantable after clarification, the applicant would therefore have to either drop the asserted Claims 15, 16, 21, and 31 or eliminate them from the application under consideration and pursue them further in a separate application.

7. The coordinated, asserted Claim 15, moreover, also contains the unclear formulation "camera shutter or the like" and also the unclear, ambiguous indication "or," which would have to be replaced by a correct, clear conjunction, such as "and" or "or"—see Schulte, Patent Law, 8th Edition, Section 34, Marginal Number 143.

With regard to a Claim 15, clarified by deletion of these unclear formulations, reference is made to the state of the art, known from Publication (6). From Publication (6)—see, in particular, Figures 1-3, with text, and Claims 1 and 2, a rotary shutter for a camera shutter is already known; it has a large number of shutter blades (14, 16, 18), which can move between an opened and closed position by means of a drive (28, 42, 64, 66), with an actuation element, and which, moreover, also has a dampening system (80, 82), which stops the movement of the drive in the closed and the open position.

Therefore, a Claim 15, clarified as described above, would also not be grantable because of the lack of novelty of its subject.

8. The subject of the coordinated, asserted Claim 16 is already anticipated with prejudice to novelty by the state of the art, known from Publication (6)—see, in particular, Figures 1-3, with text. Claim 16 is therefore likewise not grantable because of the lack of novelty of its subject.

9. The coordinated, asserted Claim 21 concerns a dampening system to stop the movement of a body, which likewise is already anticipated with prejudice to novelty by two colliding motor vehicles with bumpers, in accordance with Publication (5)—see the statements, under Point 5, of this Notice. The feature, wherein the material, upon impact, experiences a transition from a glass phase to a rubber phase, does not thereby represent a limitation, since with sufficiently high impact energy, the glass transition temperature is inevitably exceeded. Claim 21 is therefore not grantable because of the lack of novelty of its subject.

10. The coordinated, asserted Claim 31 contains the indefinite indication "essentially"—see Schulte, Patent Law, 8th Edition, Section 34, Marginal Number 142 and cannot be granted because of this reason,

since there is no clear indication as to what should be placed under protection as patentable. Aside from this, the subject of a clarified Claim 31, which—to the extent that it can be discerned—also comprises, in turn, colliding motor vehicles with bumpers, corresponding to Publication (5), is already suggested by the cited state of the art, since the feature of the spring, indicated in Claim 31, obviously can also be implemented by the elastic properties of the bumper material.

11. The asserted Claims 2-11, 13, 14, 17-20, 22, 24-30 and 32 fall with the nongratable, asserted Claims 1, 12, 16, 21, 23, and 31, to which they refer. Furthermore,

- the asserted Claims 2, 8, 10, 11, 13, 14, 19, 22, 25,-27 and 29 also contain the indefinite indications "essentially," "circa," or "approximately," wherein the asserted Claim 2 is also in contradiction to the asserted Claim 3, dependent on it, which contains the formulation "the punctiform contact" without the relativization "essentially";

- the asserted Claims 11, 25, and 26 likewise contain unclear ASTM data and the Claims 11 and 26, moreover, the measurement units "°F" and "psi," which are useless in the area of application of German Patent Law and which are to be replaced by the corresponding data, set in parentheses, in the pertinent standard measurement units; and

- the asserted Claims 20 and 23 likewise contain the unclear designations "molecular weight of 3-6 million" or "molecular weight between 3 and 6 million"; and

- the asserted Claim 22, moreover, contains an unclear reference back to Claim 20, since not Claim 20, but rather it is Claim 21 that first aims at a dampening system.

12. With the documents under consideration, in particular, the unclear and nonuniform main and secondary claims, the granting of a patent is not possible. Rather, the applicant must reckon with a rejection if the applicant is maintained with the asserted documents.

Examination Department for G03B 9/08

[signature] January 8, 2009

Dr. Langer

(Extension 2718)

Appendix: Photocopies of citations (1)-(6)